

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JANNELL R. BUCKLEY,

Plaintiff

1:08-cv-01880 (DLC)

ECF Case

v.

LIBERTY HEALTH ADVANTAGE, INC.,

Defendant.

**DEFENDANT'S MOTION FOR  
EXTENSION OF TIME TO PLEAD**

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Pursuant to Fed. R. Civ. P. 6 (b)(1)(B), Defendant Liberty Health Advantage, Inc. moves this Court for enlargement of time until September 16, 2008, within which it may answer or otherwise respond to the complaint in this action. Defendant does not seek or anticipate seeking any change in the pretrial conference scheduled for September 26, 2008.

This motion is being made after the initial time for responding to the Complaint expired<sup>1</sup> because communication delays by a third party, which Defendant initiated immediately on being served with the complaint, impeded Defendant from seeking to retain counsel until after the initial time expired. Defendant submits that the short period

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<sup>1</sup> Initial service Plaintiff made on the Secretary of New York State did not actually give notice to the Company. Plaintiff therefore sought the court's authorization of a second service attempt, which resulted in actual contact and delivery of the complaint to Defendant by letter dated July 29 from Plaintiff's counsel. (copy attached). It is unclear what date actually was the due date for Defendant's response in these circumstances.

of the delay, the lack of prejudice to Plaintiff, the lack of adverse impact on judicial proceedings, Defendant's lack of control over the cause of the delay and Defendant's good faith comprise excusable neglect for the delay in making this motion. *Bolin v. Harvard Protection Services, Inc.*, 2008 U.S. App. LEXIS 1024 \*8 (2d Cir. 2008).

This is Defendant's first request for an extension of time with respect to this deadline. Counsel for Plaintiff has been contacted and has no objection to the granting of this motion.

Dated at Bridgeport, Connecticut this 2<sup>nd</sup> day of September, 2008.

THE DEFENDANT  
LIBERTY HEALTH ADVANTAGE, INC.

By: /s/ Timothy G. Ronan  
Timothy G. Ronan (tr7693)  
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**CERTIFICATION**

I hereby certify that on September 2, 2008, a copy of foregoing Motion for Extension of Time to Plead was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Timothy G. Ronan

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July 29, 2008

Via First Class Mail

Lorilyn Rosales-Menzel, Esq.  
Director of Legal Services  
Liberty Health Advantage, Inc.  
1 Huntington Quadrangle, Suite 3N01  
Melville, New York 11747

Re: Jannell R. Buckley v. Liberty Health Advantage, Inc.  
United States District Court, Southern District of New York  
Case No.: 08-CV-1880

Dear Ms. Rosales-Menzel:

As per our telephone communications of today's date, we are the attorneys for plaintiff, Jannell Buckley, in the above-entitled matter. Enclosed please find a copy of a letter sent to Magistrate Judge Denise L. Cote of the United States District Court, Southern District of New York concerning Liberty Health Advantage, Inc.'s failure to appear in this case.

As per our representation to Magistrate Cote, enclosed please find a copy of the summons and verified complaint in this action. Please contact us upon your receipt of same so that we may arrange for your timely response.

In addition, please feel free to contact us with any questions or comments regarding the foregoing or the enclosed.

Very truly yours,

  
Stephanie J. Kaufman

Encl.

SJK/mk